IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 29558-M of 2007

Date of decision: 10.5.2007

Rajdip Singh Dhaliwal …Petitioner

Versus

State of Punjab and ors …Respondents

Present: Mr RS Ghuman, Advocate for the petitioner.

S.S. SARON, J.

The petitioner has filed this petition under Section 482 CrPC seeking directions to respondents-1 to 4 to register FIR for offences under Sections 420 and 120-B IPC and other relevant provisions of the IPC against respondents-5 to 7 at PS Division No.2, District Moga and to take further necessary action thereon expeditiously and within stipulated period of time.

Learned counsel for the petitioner has submitted that the petitioner has addressed a letter dated 4.12.2006 (Annexure P2) to the DGP Punjab (respondent-2) for taking action against respondents-5 to 7 for having cheated him to get Canadian Immigration for Mandeep Kaur Dhaliwal (respondent-7) by way of fraudulent marriage with him and threatening to kill him for not helping the accused to get Canadian Visa for respondent-7. It is alleged by the petitioner that he had married Mandeep Kaur (respondent-7) on 7.11.2005 at Moga. He was informed before marriage that Mandeep Kaur has a Diploma in Computer Business

Application Programmer. Since he was a Computer Engineer, he was looking for the same match in the fields of Computer. He trusted Mandeep Kaur and her parents and did not check any certificate and other documents to verify her education. He thought that they were not to cheat him as this was a life time relationship with his wife. Therefore, he gave his consent to marry Mandeep Kaur. However, later he came to know that his wife had no knowledge of Computer Programming and she never had any Computer Programming and other related education. On this account, he contacted his lawyer in Canada who advised him to stop the process of Immigration of the wife of the petitioner to Canada. On 8.8.2006, some relatives of the wife of the petitioner, it is alleged, visited his house and threatened him with dire consequences if his wife did not come to Canada. He informed the local Police in Canada about this. On these allegations, it is prayed that the FIR be registered.

Mr Ghuman, learned counsel for the petitioner has contended that the allegations as made in the letter (Annexure P2) clearly disclose the commission of a cognizable offence and, therefore, the official respondents have no option but to register a FIR. In support of his contention, the learned counsel has placed strong reliance on the following judgments:-

"1. ***Ramesh Kumari v. State*** (2006)2 SCC 677.

2. ***Mohindro v. State of Punjab and ors*** (2001)9 SCC 581

3. ***Manjit Singh v. Sr Supdt of Police*** 1997(2) RCR(Cr) 412 (P&H).

4. ***Bhupinder Kaur v. State of Punjab*** 1997(2) RCR(Cr) 244 (P&H).

5. ***Surinder Singh v. State of Punjab*** 1997(3) RCR(Cr) 158 (P&H),

6. ***Balwant Singh v. State of Punjab*** 1998(2) RCR (Cr) 454 (P&H)."

I have given my thoughtful consideration to the contentions of the learned counsel for the petitioner.

It may be noticed that the letter dated 4.10.2006 (Annexure P2) is addressed to the DSP Punjab (respondent-2). It has not been shown by the learned counsel for the petitioner as to whether the complainant has approached the Incharge of PS of Division No.2, Moga making allegations as have been made by way of letter Annexure P2. Chapter XII CrPC provides for information to the Police and their powers to investigate. Section 154(1) CrPC envisages that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informants. Besides, every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. The petitioner has not placed any material on record to show that he approached the Incharge of the Police Station concerned in this regard. In terms of Section 154(3), any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by the CrPC. Besides, it is the satisfaction of the Superintendent of Police that such information discloses the commission

of a cognizable offence that further proceedings are to be taken. The petitioner is not shown to have complied with the procedure as mandated by the provisions of the CrPC. The case law referred to by the learned counsel for the petitioner no doubt provides that whenever an information made by the complainant discloses the commission of a cognizable offence, the Police officials ought to register a FIR. However, this Court in exercise of its inherent jurisdiction under Section 482 CrPC is normally not to issue directions for registration of FIR. In Ramesh Kumari's case (supra), it was held that the provisions of Section 154 CrPC are mandatory and the Police officer concerned is duty bound to register the case on receiving an information disclosing a cognizable offence. Besides, the genuineness or the credibility of the information is not a condition precedent for registration of a case. The same can be decided after registration of the case. There is no dispute to the said proposition. However, in the event of failure of the Incharge of the Police Station concerned to register a FIR, the procedure provided in terms of Section 154(3) CrPC is to be followed. The ratio of the judgment does not envisage that the High Court, in exercise of its inherent jurisdiction under Section 482 CrPC is to issue directions for registration of a FIR. In Mohindro's case (supra), the Supreme Court directed the Police to register a FIR in the circumstances of the said case. In Manjit Singh's case (supra), an inquiry was conducted by the Police but no case was registered. The Police was directed to register a case in the facts and circumstances of the said case. In Bhupinder Kaur's case (supra), it was observed that the registration of the FIR was mandatory in cases where commission of a cognizable offence had been disclosed and it is only after registration of the FIR that the Police would investigate into the matter

and if no case is made out, the Police is at liberty to file a cancellation report. The Police cannot prejudge the issue and refuse to register a case. In Surinder Singh's case (supra), the case was not registered by the Police on the ground that an inquiry had been conducted which showed that there was no force in the complaint. It was observed that when the complaint discloses commission of an offence, the Police should register the FIR and then proceed with it according to law and that it is not open to the Police to say that even without registering the FIR they have enquired into the matter and found the allegations false. In Balwant Singh's case (supra), the complainant lodged a report with the Police that his wife was killed because of some greediness. The Police report showed that the deceased died a natural death. The court directed the Police to register FIR and SSP to supervise the investigation. Therefore, the legal position is not in dispute that on receipt of information the Police Officer concerned ought to register a FIR. The question that, however, requires consideration is whether this Court is to issue directions for registration of FIR. In ***All India Institute of Medical Sciences Employees Union (Regd) through its President v. Union of India*** 1997(4) RCR (Cr) 594 (SC), the petitioner had submitted complaints to the Prime Minister and other authorities leveling allegations of mis-appropriation against Government Officers but no action had been taken by them. He then filed a writ petition before the High Court seeking directions that the matter may be investigated by the CBI, which was dismissed by the High Court. It was observed by the Supreme Court that the petitioner was required to lodge a complaint with the Police and in case no action was taken, he was required to file a complaint case before the Magistrate. In case the Magistrate, after

recording evidence finds a prima facie case, instead of issuing process to accused, he is empowered to direct the Police to investigate into the offence under Chapter XII of the CrPC and submit a report. If the Magistrate finds that the complaint does not disclose any offence, he is to dismiss the complaint under Section 203 CrPC. However, the petitioner cannot seek directions of the High Court that the investigation may be given to the CBI. The petitioner should first lodge a report with the Police and if no action is taken by the Police, he is required to file a complaint case before the Magistrate. It was observed that the procedure prescribed under Chapters XII or XV CrPC is to be exhausted before approaching the High Court. In ***Gangadhar Janardan Mhatre v. State of maharashtra and ors*** 2004 (4) RCR (Cr) 682 (SC), it was observed that where no action is taken by the Police on a report regarding commission of offence lodged with it, then a writ petition in such a case is not to be entertained without the complainant availing remedy under the CrPC. The complainant, it was observed, can lay a complaint with the Magistrate in terms of Sections 190 and 200 CrPC who is required to enquire into the complaint. In ***Hari Singh v. State of UP*** (2006)5 SCC 733, a writ petition was filed in the Supreme Court directing the CBI to conduct an inquiry into the murder of petitioner's son therein as no action had been taken by the Police on an FIR lodged by him. It was held that such a petition was not to be entertained in view of the relevant provisions of the CrPC. It was held that when an information is laid with the Police but no action is taken in that behalf, the complainant can under Section 190 read with Section 200 CrPC, lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter

XV CrPC. In case the Magistrate after recording the evidence finds a prima facie case instead of issuing the process to the accused, he is empowered to direct the Police concerned to investigate into the offence under Chapter XII CrPC and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 CrPC. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. In such cases, it is alleged, a writ is not to be entertained. Therefore, this Court in ***M/s Larsen and Toubro Ltd v. Central Bureau of Investigation*** 2007(1) RCR (Cr) 707 dismissed the petition seeking directions to the Police to register a FIR. It was observed that prior to approaching the High Court, the petitioner did not avail the alternative remedy of filing a complaint before the Magistrate for referring the same for registration of a case under Section 156 CrPC or taking cognizance under Section 200 CrPC. Besides, the petitioner did not avail the remedy available to it under the CrPC i.e. by giving any written information to the SHO of the concerned area or to the SSP of the district concerned or by filing a complaint to the Judicial Magistrate. The petitioner, it was observed, still had the remedy to file a private complaint in the mater before the Judicial Magistrate. Therefore, the conspectuous of the law is that the petitioner is first required to approach the Incharge of the Police Station concerned by making a written application or an oral statement which is to be reduced in writing by it. In case he is aggrieved by the inaction of the Police in recording his statement or entering his written application, he is to approach the SP of the district concerned setting out his grievances. It is on

recording of the satisfaction by the SP in terms of Section 154(3) CrPC that the information discloses the commission of a cognizable offence that he is to either investigate the case himself or direct the investigation to be made by any Police Officer subordinate to him in the manner provided by the CrPC. In case there is inaction by the Police officials, the petitioner has his remedy of filing a complaint in terms of Section 190 read with Section 200 CrPC on the basis of which the Magistrate is required to inquire into the complaint as provided under Chapter XV CrPC. In case the Magistrate after recording the evidence finds a prima facie case to be made out instead of issuing process to the accused, he is empowered to direct the Police concerned to investigate into the offence under Chapter XII CrPC and to submit a report. If he finds that the complaint does not disclose any offence, he is empowered to dismiss it in terms of Section 203 CrPC. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. However, directions by this Court in exercise of powers under Section 482 CrPC are normally not to be issued for registration of a FIR.

Keeping in view the aforesaid situation, there is no merit in the petition and the same is accordingly dismissed. The petitioner may, however, avail his alternative remedy in accordance with law.

10.5.2007. (S.S.SARON)
ASR JUDGE